

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	
	:	
v.	:	CRIMINAL NO. 08-390
	:	
DAVID FERRELL	:	

ORDER

AND NOW, this day of , 2009, it is hereby ORDERED that all references by defense counsel, defendant or witnesses, during opening statements or closing arguments, during direct or cross-examination of witnesses, to the potential punishment faced by defendant David Ferrell for the offenses charged, is prohibited.

BY THE COURT:

HONORABLE JUAN R. SANCHEZ
Judge, United States District Court

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UNITED STATES OF AMERICA	:	
	:	
v.	:	CRIMINAL NO. 08-390
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**GOVERNMENT’S MOTION IN LIMINE TO PROHIBIT MENTION OF DEFENDANT
FERRELL’S POTENTIAL PUNISHMENT IF CONVICTED**

I. INTRODUCTION

The United States of America, by its undersigned attorneys, Michael L. Levy, United States Attorney for the Eastern District of Pennsylvania, and Joseph Whitehead, Jr., Special Assistant United States Attorney, asks this Court to rule in limine that neither defense counsel, defendant, nor witnesses may make reference to the potential punishment faced by defendant Johns for the offense charged. The United States represents as follows.

II. STATEMENT OF FACTS

The indictment in this case charges that on or about March 2, 2008, defendant David Ferrell knowingly and intentionally possessed with intent to distribute 5 grams or more, that is, approximately 16.19 grams, of a mixture and substance containing a detectable amount of cocaine base (“crack”), a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1), (b)(1)(B); and knowingly and intentionally possessed with intent to distribute approximately 16.19 grams of cocaine base (“crack”) within 1,000 feet of the real

property comprising the Family Charter School, a public elementary school, located at 907 North 41st Street in Philadelphia, in violation of Title 21, United States Code, Section 860.

III. THE LAW

The punishment for the offenses charged is not a proper matter for the jury's consideration. United States v. Austin, 533 F.2d 879, 885-86 & n.14 (3d Cir. 1976), cert. denied, 429 U.S. 1043, 97 S. Ct. 746 (1977). Accord United States v. McDonald, 935 F.2d 1212, 1222 (11th Cir. 1991). As the Court observed in United States v. Greer, 620 F.2d 1383, 1384 (10th Cir. 1980): "The authorities are unequivocal in holding that presenting information to the jury about possible sentencing is prejudicial." This prohibition applies equally when evidence of punishment would prejudice the government and benefit the defendant. United States v. Broxton, 926 F.2d 1180, 1182-83 (D.C. Cir. 1991), cert. denied, 499 U.S. 911, 111 S. Ct. 1118 (1991) (affirming district court's refusal to inform the jury that, if convicted, defendant faced a 10-year mandatory minimum term of imprisonment). Questioning and argument addressing these issues, thus, would be improper.

The trial court has "a duty to limit the jury's exposure to only that which is probative and relevant and must attempt to screen from the jury any proffer that it deems irrelevant." United States v. Romano, 849 F.2d 812, 815 (3d Cir. 1988). An in limine order is a proper method of restricting irrelevant evidence. Id. Evidence should be excluded where it is irrelevant to the issue being tried or where it will "induce the jury to decide the case on an improper basis, commonly an emotional one, rather than on the evidence presented..." United States v. Vretta, 790 F.2d 651, 655 (7th Cir.), cert. denied, 479 U.S. 851, 107 S. Ct. 179 (1986) (citation omitted).

IV. CONCLUSION

For the foregoing reasons, the government respectfully requests that this Court preclude all references by defense counsel, the defendant and witnesses to the potential punishment faced by defendant David Ferrell for the offenses charged, and prohibit the making of any reference to the punishment facing the defendant for the offenses charged in opening or closing argument, direct or cross-examination of witnesses, or otherwise in the hearing of the jury.

Respectfully submitted,

MICHAEL L. LEVY
United States Attorney

JOSEPH WHITEHEAD, JR.
Special Assistant United States Attorney

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion in Limine has been served electronically and by fax transmission to the following:

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